



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/164597

PRELIMINARY RECITALS

Pursuant to a petition filed March 09, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on April 14, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner's request for physical therapy services.

NOTE: The record was held open to give Petitioner's mother an opportunity to submit an authorization from the Petitioner and information regarding Petitioner's dates of service with her physical therapist. On April 15, 2015, Petitioner's mother submitted a fax with the aforementioned information. It has been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.
2. Petitioner is 19 years old and suffers from Limb Girdle type Muscular Dystrophy, which caused decreased range of motion in her shoulders, trunk, pelvis and lower extremities. (Exhibit 3, pg. 5)
3. On January 8, 2015, Rehab Resources, on behalf of the Petitioner, filed a request for prior authorization of 26 sessions of physical therapy, to be provided once a week for 26 weeks, at a cost of \$6,214.00. (Exhibit 3, pg. 4)
4. According to the Prior Authorization / Therapy Attachment, the goal of the requested therapy is, "to improve tolerance and range of motion to allow for improved range of motion for bathing, cleaning, donning pants, ADL's." (Exhibit 3, pg. 7)
5. The most recent evaluation in the record, which is dated December 17, 2014, indicates that Petitioner's long term goals are to 1) Reduce regressions in head control and trunk alignment to improve visual capabilities in wheelchair and 2) Increase muscle elongation of hip flexors to allow for recline in shower / bath chair for 10 minutes with minimal complaints of pain expressed, per family and patient report. (Exhibit 3, pg. 12)
6. The December 17, 2014 evaluation indicates that Petitioner's short term goals are 1) to tolerate position with wedge and only 2 pillows for 10 minutes to facilitate increased elongation for bathing chair; 2) Increase hip flexor elongation to tolerate bath chair for 2 minutes with patient in recline; and 3) Increase active and passive cervical range of motion to achieve negative 50-60 degrees from midline head alignment passively, while in an upright seated posture, 3 consecutive sessions." (Exhibit 3, pg. 12)
7. The goals stated in Findings of Fact 5 and 6 above are the same goals, the Petitioner started with, during a course of treatment that began in September 2014, at rate of one session per week for 12 weeks. (Exhibit 3, pgs. 8 and 9)
8. On January 20, 2015, DHS sent Rehab Resources a letter indicating that there were some "PA Error Messages". Specifically DHS asked Rehab Resources to:
 - a. Provide documentation of a home exercise program and written evidence of treatment coordination with other providers
 - b. Explain why the Petitioner's treatment goals require the frequency/duration of the requested therapy and whether Petitioner actually has the potential to reach those goals if therapy is approved in the quantity requested.
 - c. Explain what functional progress is expected and why it is believed the Petitioner is able to reach that functional goal
 - d. Explain why either a home exercise program, equipment or environmental adaptations cannot meet the patient's needs
 - e. Provide evidence that whatever skills that were gained in therapy were carried over to other settings within the last six months.

(Exhibit 3, pgs. 14-17)
9. On January 23, 2015, Petitioner's physical therapist submitted a letter in response to DHS's request for additional information. It did not include any documentation of a home exercise plan, such as a written plan or progress notes showing that a home exercise plan was discussed with Petitioner's caregivers, nor did it explain why a home exercise program would not be effective in

helping the Petitioner maintain/improve her range of motion or improve her skin integrity. (Exhibit 3, pg. 19)

10. On February 2, 2015, DHS sent written notices to the Petitioner and to Rehab Resources advising them that the request for therapy was modified. DHS approved 6 sessions for the period between January 12, 2015, through July 13, 2015. (Exhibit 3, pgs. 20-25)
11. Petitioner's mother, on Petitioner's behalf, filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 9, 2015. (Exhibit 1)
12. Petitioner has received physical therapy since 2009. This is her 11th prior authorization request. The five most recent requests for prior authorization have modified the request for therapy and granted between four and eight sessions, for each period which ranged from three to six months in length. (Exhibit 2)
13. Petitioner did not receive any physical therapy between October 2, 2014 and March 26, 2015. (Exhibit 4)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Emphasis Added Wis. Adm. Code. §DHS 101.03(96m)

Prior authorization is required for physical therapy services in excess of 35 treatment days “per spell of illness.” Wis. Admin. Code §DHS 107.16(2)(b)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested level of therapy meets the approval criteria.

It is undisputed that Petitioner is a 19 year old girl with muscular dystrophy who needs some amount of physical therapy. The issue in dispute is what level of treatment is medically necessary and appropriate. Petitioner argues that once weekly physical therapy is necessary; DHS argues that the record only supports therapy at a rate of once per month for six months, so that Petitioner’s therapist can establish and maintain a home exercise plan.

In its letter submitted on April 1, 2015, DHS states that it did not find 26 weeks of weekly physical therapy to be medically necessary because:

- 1) Petitioner’s physical therapist failed to clearly explain why a home exercise program would not be appropriate;
- 2) Petitioner’s physical therapist did not provide any medical documentation that would support a claim that a home exercise program would be contraindicated by Petitioner’s condition;
- 3) Rehab Resources did not adequately document and explain what regression the Petitioner suffered, if any, from the lack of physical therapy between October 2, 2014, her last date of treatment and December 17, 2014, the date of the most recent evaluation.

Looking at the documentation that Petitioner’s physical therapist and Rehab Resources provided, there is a glaring absence of any documentation concerning a home exercise plan. Indeed, it appears as though Petitioner’s therapist never put one together.

Petitioner and her mother testified that the Petitioner has brittle bones and that a home exercise program is not appropriate and that the skills of a physical therapist are needed to avoid unnecessary pain or an accidental fracture from over extending the Petitioner’s shoulders, trunk and limbs. However, Rehab Resources did not provide any medical documentation to substantiate that claim.

What is perhaps most troubling is the lack of information regarding the Petitioner's status at the time of her various evaluations and the current prior authorization request.

It is hard to know if Petitioner has benefitted from her last period of physical therapy, because Petitioner's long term and short term goals did not change between the time of her evaluation in September 2014 and the time of the subsequent evaluation in December 2014. (See the Physical Therapy Re-Certifications, Exhibit 3, pgs. 8-11) I note that under the heading "Assessment" that there was no change noted in Petitioner's functional abilities, medical impairments or functional limitations. (Id.) Given that the Petitioner did not have physical therapy for two months, one might have expected a description, in measurable terms, of the changes in Petitioner's range of motion in her legs, arms, shoulders or trunk, if she had a need for continued therapy at once per week, but the physical therapist didn't note any such regression.

It should also be noted that in the Prior Authorization/Therapy Attachment, under Section VI-Progress, Petitioner status between June 11, 2014 and January 12, 2015, is noted to be about the same regarding her ability to don pants and to tolerate removal from her wheel chair, that her ability to bath remained about the same, that she "continues to tolerate removal from wheel chair and is able to tolerate more lateral weight shifting", that she continued to complain of pain with elongation in supine position, but that she had sporadic skin breakdown which was being monitored by the Petitioner's family. Again, there is no significant regression noted even in the absence of physical therapy for two months. (See Exhibit 3, pg. 6) In addition, the Petitioner's status is not described in measurable terms, such as the angle at which she is able recline or bend her legs.

Based upon the foregoing, is found that Rehab Resources did not provide sufficient information to justify physical therapy services at a rate of once per week for 26 weeks.

Petitioner and her mother testified that Petitioner's ability to lay supine has decreased because she went without therapy and that her contractures have increased, which is causing her more pain when she tries to complete activities of daily living such as bathing and getting dressed. They also testified that the Petitioner restarted therapy on or about March 27, 2014.

If the Petitioner has suffered from significant regression due to the lack of physical therapy for five months, her provider, Rehab Resources, should put in a new prior authorization request, clearly explaining in **measurable** terms what Petitioner's ability was in October 2014 when her therapy ended, where she was when therapy began on March 27, 2014 and where she is currently. If it is, in fact, the case that the Petitioner is so fragile that a physical therapist must perform all of her range of motion exercises, such that a home exercise program is not appropriate, Rehab Resources should obtain medical documentation to support that claim and include it in the new prior authorization request.

Petitioner does NOT need to wait for the current prior authorization to expire. Rehab Resources can submit a new prior authorization request at any time.

I note to the Petitioner that Rehab Resources will not receive a copy of this decision. The Petitioner might wish to share a copy of this decision with Rehab Resources for future reference.

CONCLUSIONS OF LAW

DHS correctly modified Petitioner's January 8, 2015 request for prior authorization of physical therapy services.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

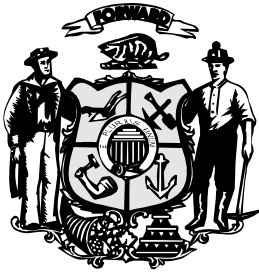
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of April, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 16, 2015.

Division of Health Care Access and Accountability